



Senate

General Assembly

File No. 484

February Session, 2000

Substitute Senate Bill No. 528

Senate, April 10, 2000

The Committee on Finance, Revenue and Bonding reported through SEN. LOONEY of the 11th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning The Regulation Of Certain Cigarette Manufacturers.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) As used in this act:
- 2 (1) "Adjusted for inflation" means increased in accordance with the
- 3 formula for inflation adjustment set forth in Exhibit C to the Master
- 4 Settlement Agreement;
- 5 (2) "Affiliate" means a person who directly or indirectly owns or
- 6 controls, is owned or controlled by, or is under common ownership or
- 7 control with, another person. The terms "owns", "is owned" and
- 8 "ownership" mean ownership of an equity interest, or the equivalent
- 9 thereof, of ten per cent or more. The term "person" means an
- 10 individual, partnership, committee, association, corporation or any
- 11 other organization or group of persons;

12 (3) "Allocable share" means allocable share as that term is defined in
13 the Master Settlement Agreement;

14 (4) "Cigarette" means any product that contains nicotine, is intended
15 to be burned or heated under ordinary conditions of use, and consists
16 of or contains (A) any roll of tobacco wrapped in paper or in any
17 substance not containing tobacco; or (B) tobacco, in any form, that is
18 functional in the product, which, because of its appearance, the type of
19 tobacco used in the filler, or its packaging and labeling, is likely to be
20 offered to, or purchased by, consumers as a cigarette; and (C) any roll
21 of tobacco wrapped in any substance containing tobacco which,
22 because of its appearance, the type of tobacco used in the filler, or its
23 packaging and labeling, is likely to be offered to, or purchased by,
24 consumers as a cigarette described in subparagraph (A) of this
25 subdivision. The term "cigarette" includes roll-your-own tobacco or
26 any tobacco which, because of its appearance, type, packaging or
27 labeling is suitable for use and likely to be offered to, or purchased by,
28 consumers as tobacco for making cigarettes. For purposes of this
29 definition of "cigarette", 0.09 ounces of roll-your-own tobacco shall
30 constitute one individual "cigarette";

31 (5) "Master Settlement Agreement" means the settlement agreement
32 executed November 23, 1998, by the state of Connecticut and leading
33 tobacco product manufacturers, entitled "State of Connecticut v. Philip
34 Morris, et al.";

35 (6) "Qualified Escrow Fund" means an escrow arrangement with a
36 federally or state-chartered financial institution having no affiliation
37 with any tobacco product manufacturer and having assets of at least
38 one billion dollars where such arrangement requires that such financial
39 institution hold the escrowed funds' principal for the benefit of
40 releasing parties and prohibits the tobacco product manufacturer
41 placing the funds into escrow from using, accessing or directing the
42 use of the funds' principal except as consistent with the provisions of

43 subsection (b) of section 2 of this act;

44 (7) "Released claims" means released claims as that term is defined
45 in the Master Settlement Agreement;

46 (8) "Releasing parties" means releasing parties as that term is
47 defined in the Master Settlement Agreement;

48 (9) "Tobacco product manufacturer" means an entity, or its
49 successor, that after the effective date of this act, directly and not
50 exclusively through an affiliate (A) manufactures cigarettes anywhere
51 that such manufacturer intends to be sold in the United States,
52 including cigarettes intended to be sold in the United States through
53 an importer except where such importer is an original participating
54 manufacturer, as that term is defined in the Master Settlement
55 Agreement, that will be responsible for the payments under the Master
56 Settlement Agreement with respect to such cigarettes as a result of the
57 provisions of subsection II (mm) of the Master Settlement Agreement
58 and that pays the taxes specified in subsection II (z) of the Master
59 Settlement Agreement, provided the manufacturer of such imported
60 cigarettes does not market or advertise such cigarettes in the United
61 States; or (B) is the first purchaser anywhere for resale in the United
62 States of cigarettes manufactured anywhere that the manufacturer
63 does not intend to be sold in the United States. A tobacco product
64 manufacturer shall not include an affiliate of a tobacco product
65 manufacturer unless such affiliate itself meets the criteria specified in
66 subparagraph (A) or (B) of this subdivision;

67 (10) "Units sold" means the number of individual cigarettes sold in
68 this state by the applicable tobacco product manufacturer, whether
69 directly or through a distributor, dealer or similar intermediary or
70 intermediaries during any year, as measured by excise taxes collected
71 by this state on packs, or on "roll-your-own" tobacco containers,
72 bearing the excise tax stamp of the state. The Department of Revenue
73 Services shall adopt such regulations, in accordance with the

74 provisions of chapter 54 of the general statutes, as are necessary to
75 ascertain the amount of state excise tax paid on the cigarettes of such
76 tobacco product manufacturer for each year.

77 Sec. 2. (NEW) (a) Any tobacco product manufacturer selling
78 cigarettes to consumers within this state, whether directly or through a
79 distributor, dealer or similar intermediary or intermediaries, after the
80 effective date of this act shall (1) become a participating manufacturer,
81 as the term is defined in section II (jj) of the Master Settlement
82 Agreement, and generally perform its financial obligations under the
83 Master Settlement Agreement; or (2) place into a Qualified Escrow
84 Fund not later than April fifteenth of each year following a year in
85 which the tobacco product manufacturer sold cigarettes in this state,
86 the following amounts, which shall be adjusted for inflation: For
87 calendar year 2000, \$.0104712 per unit sold after the effective date of
88 this act; for each of calendar years 2001 and 2002, \$.0136125 per unit
89 sold during said calendar years; for each of calendar years 2003
90 through 2006, \$.0167539 per unit sold during said calendar years; for
91 calendar year 2007 and for each calendar year thereafter, \$.0188482 per
92 unit sold during such calendar years.

93 (b) A tobacco product manufacturer that places funds into escrow
94 pursuant to subsection (a) of this section shall receive the interest or
95 other appreciation on such funds, as earned. Such funds shall be
96 released from escrow only (1) to pay a judgment or settlement on any
97 released claim brought against such tobacco product manufacturer by
98 the state or any releasing party located or residing in the state. Funds
99 shall be released from escrow under this subdivision in the order in
100 which the funds were placed into escrow and only to the extent and at
101 such time as is necessary to make payments required under such
102 judgment or settlement; (2) to the extent that a tobacco product
103 manufacturer establishes that the amount it was required to place into
104 escrow in a particular year was greater than the state's allocable share
105 of the total payments that such manufacturer would have been

106 required to make in that year under the Master Settlement Agreement
107 had it been a participating manufacturer as such payments are
108 determined pursuant to section IX(i)(2) of that Master Settlement
109 Agreement and before any of the adjustments or offsets described in
110 section IX(i)(3) of that agreement other than the inflation adjustment,
111 the excess shall be released from escrow and revert back to that
112 tobacco product manufacturer; or (3) to the extent not released from
113 escrow under subdivision (1) or (2) of this subsection, funds shall be
114 released from escrow and revert back to such tobacco product
115 manufacturer twenty-five years after the date on which such funds
116 were placed into escrow.

117 Sec. 3. (NEW) (a) Each tobacco product manufacturer that elects to
118 place funds into escrow pursuant to section 2 of this act shall annually
119 certify to the Attorney General that it is in compliance with said
120 section 2.

121 (b) The Attorney General may bring a civil action on behalf of the
122 state against any tobacco product manufacturer that fails to place into
123 escrow the funds required under this section. Any tobacco product
124 manufacturer that fails in any year to place into escrow the funds
125 required under this section shall (1) be required within fifteen days to
126 place such funds into escrow as shall bring it into compliance with this
127 section. The court, upon a finding of a violation of this subsection, may
128 impose a civil penalty in an amount not to exceed five per cent of the
129 amount improperly withheld from escrow per day of the violation and
130 in a total amount not to exceed one hundred per cent of the original
131 amount improperly withheld from escrow; (2) in the case of a knowing
132 violation, be required within fifteen days to place such funds into
133 escrow as shall bring it into compliance with this section. The court,
134 upon a finding of a knowing violation of this subsection, may impose a
135 civil penalty in an amount not to exceed fifteen per cent of the amount
136 improperly withheld from escrow per day of the violation and in a
137 total amount not to exceed three hundred per cent of the original

138 amount improperly withheld from escrow; and (3) in the case of a
139 second knowing violation, be prohibited from selling cigarettes to
140 consumers within the state, whether directly or through a distributor,
141 dealer or similar intermediary, for a period not to exceed two years.

142 (c) Each failure to make an annual deposit required under section 2
143 of this act shall constitute a separate violation.

144 Sec. 4. This act shall take effect July 1, 2000.

FIN Committee Vote: Yea 47 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Precludes a Potential Future Revenue Loss

Affected Agencies: Office of the Attorney General, Office of Policy and Management

Municipal Impact: None

Explanation**State Impact:**

Since the Master Settlement Agreement (MSA) between the settling states and Original Participating Manufacturers (OPMs) provides for a possible reduction in Connecticut's annual and strategic contribution payments if the state does not enact non-participating manufacturer legislation, the bill precludes a potential future revenue loss. A revenue loss would occur if Connecticut did not enact the model legislation and an independent economic consultant concluded that the participating manufacturers lost more than 2% of their national market share to non-participating manufacturers (NPMs) due to the "disadvantage experience" as a result of the provisions contained in the MSA.

It should be noted, that the state's latest tobacco settlement payment of \$64.1 million (due April 17, 2000) includes a downward adjustment of \$2.0 million associated with a loss in market share by the OPMs to the NPMs. Connecticut, along with the other settling states, has filed a

dispute over the reduction with the Independent Auditor overseeing the disbursement of tobacco settlement funds. Therefore any loss of funds to the state, if any, will be contingent upon the outcome of the dispute. Since the dispute is not expected to be settled before the end of FY 00, it is unclear what impact, if any, the bill will have on the dispute.

OLR Bill Analysis

sSB 528

AN ACT CONCERNING THE REGULATION OF CERTAIN CIGARETTE MANUFACTURERS.**SUMMARY:**

This bill requires any tobacco products manufacturer that sells cigarettes in Connecticut to either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco products manufacturers concluded on November 23, 1998 or (2) pay certain amounts into a qualified escrow fund.

A manufacturer that chooses the latter option must establish an escrow fund and, by April 15 annually, pay into it a set amount for each cigarette it sells in the state. The amount is just over one cent per cigarette for the second half of 2000 and rises to 1.9 cents per cigarette for 2007 and each year thereafter. The amounts must be adjusted for inflation.

Escrowed funds must be used to pay judgments or settlements on released claims brought against the manufacturer by the state or any other party to the master settlement agreement located or living here. Tobacco manufacturers receive any interest or other appreciation on money in the fund as it is earned. Any unused funds must be released to the manufacturer 25 years after they are deposited.

The bill requires manufacturers to certify their compliance with the escrow requirements to the attorney general annually and requires any manufacturer who fails to place funds in escrow by April 15 annually to do so within 15 days.

The bill allows the attorney general to sue violators on the state's behalf. If the court finds a violation, the bill allows it to impose a civil penalty of up to 5% of the amount improperly withheld for each day of violation up to 100% of the improperly withheld amount. For a

knowing violation, the penalty may be up to 15% of the improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required annual deposit is a separate violation.

EFFECTIVE DATE: July 1, 2000

COVERED TOBACCO PRODUCT MANUFACTURERS

The bill covers any entity or successor that, after July 1, 2000, directly and not through an affiliate, (1) manufactures cigarettes intended for sale in the U.S. (regardless of where they are manufactured) or (2) is the first purchaser anywhere of cigarettes for resale in the U. S., even if their manufacturer did not intend them for sale in the U.S. The first condition includes cigarettes that the manufacturer intends to sell in the U.S. through an importer, unless the importer is responsible for payments for those cigarettes under the master settlement agreement.

The bill does not apply to affiliates of tobacco manufacturers (those that directly or indirectly own or control the manufacturer, are controlled by it, or together with it are under the common control of a third entity) unless those affiliates themselves meet the criteria listed above.

PER-UNIT ESCROW CONTRIBUTION

The bill requires covered manufacturers to pay the following amounts, adjusted for inflation, per-unit sold into their qualified escrow accounts.

Calendar Year	Per-Unit Payment
2000 after 7/1/00	\$.0104712
2001 and 2002	\$.0136125
2003-2006	\$.0167539
2007 and after	\$.0188482

The per-unit contribution applies to each cigarette sold in Connecticut by a covered manufacturer during any year. It applies to direct sales and sales through distributors, dealers, or similar intermediaries. The

units must be measured by Connecticut excise taxes collected on stamped packs or “roll your own” tobacco containers. Under the bill, each .09 ounces of roll-your-own tobacco counts as one cigarette.

The bill requires the Department of Revenue Services to adopt regulations to implement this provision.

ESCROW FUND

In order to qualify under the bill, the escrow arrangement must be with a state or federally chartered financial institution that is not affiliated with the tobacco manufacturer. The institution must have at least \$1 billion in assets. The escrow arrangement must allow the institution to hold the funds for the principal benefit of parties to a settlement and must prohibit the manufacturer from using, accessing, or directing them.

If a manufacturer shows that the amount it had to place in escrow in any year was more than the state’s share of the total payment the manufacturer would have had to make for that year under the master settlement agreement, the excess must be released from escrow and returned to the manufacturer.

The bill requires funds to be released from escrow in the order they were placed there.

BACKGROUND

Model Statute

This bill is the “model statute” required under the tobacco master settlement agreement. States that do not pass the model statute have their allotments from the settlement reduced by up to 65%.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 47 Nay 0

